

# PRACTICE DIRECTION – PROTOCOLS

## GENERAL

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- 1.1 This Practice Direction applies to the pre-action protocols which have been approved by the Head of Civil Justice.
- 1.2 The pre-action protocols which have been approved are set out in para 5.1. Other pre-action protocols may subsequently be added.
- 1.3 Pre-action protocols outline the steps parties should take to seek information from and to provide information to each other about a prospective legal claim.
- 1.4 The objectives of pre-action protocols are:
  - (1) to encourage the exchange of early and full information about the prospective legal claim,
  - (2) to enable parties to avoid litigation by agreeing a settlement of the claim before the commencement of proceedings,
  - (3) to support the efficient management of proceedings where litigation cannot be avoided.

## COMPLIANCE WITH PROTOCOLS

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- 2.1 The Civil Procedure Rules enable the court to take into account compliance or non-compliance with an applicable protocol when giving directions for the management of proceedings (see CPR rules 3.1(4) and (5) and 3.9(e)) and when making orders for costs (see CPR rule 44.3(a)).
- 2.2 The court will expect all parties to have complied in substance with the terms of an approved protocol.
- 2.3 If, in the opinion of the court, non-compliance has led to the commencement of proceedings which might otherwise not have needed to be commenced, or has led to costs being incurred in the proceedings that might otherwise not have been incurred, the orders the court may make include:
  - (1) an order that the party at fault pay the costs of the proceedings, or part of those costs, of the other party or parties;
  - (2) an order that the party at fault pay those costs on an indemnity basis;
  - (3) if the party at fault is a claimant in whose favour an order for the payment of damages or some specified sum is subsequently made, an order depriving that party of interest on such sum and in respect of such period as may be specified, and/or awarding interest at a lower rate than that at which interest would otherwise have been awarded;

- (4) if the party at fault is a defendant and an order for the payment of damages or some specified sum is subsequently made in favour of the claimant, an order awarding interest on such sum and in respect of such period as may be specified at a higher rate, not exceeding 10 above base rate (cf. CPR rule 36.21(2), than the rate at which interest would otherwise have been awarded.
- 2.4 The court will exercise its powers under paragraphs 2.1 and 2.3 with the object of placing the innocent party in no worse a position than he would have been in if the protocol had been complied with.
- 3.1 A claimant may be found to have failed to comply with a protocol by, for example:
  - (a) not having provided sufficient information to the defendant, or
  - (b) not having followed the procedure required by the protocol to be followed (e.g. not having followed the medical expert instruction procedure set out in the Personal Injury Protocol).
- 3.2 A defendant may be found to have failed to comply with a protocol by, for example:
  - (a) not making a preliminary response to the letter of claim within the time fixed for that purpose by the relevant protocol (21 days under the Personal Injury Protocol, 14 days under the Clinical Negligence Protocol),
  - (b) not making a full response within the time fixed for that purpose by the relevant protocol (3 months of the letter of claim under the Clinical Negligence Protocol, 3 months from the date of acknowledgement of the letter of claim under the Personal Injury Protocol),
  - (c) not disclosing documents required to be disclosed by the relevant protocol.

## **PRE-ACTION BEHAVIOUR IN OTHER CASES**

- 4 In cases not covered by any approved protocol, the court will expect the parties, in accordance with the overriding objective and the matters referred to in CPR 1.1(2)(a), (b) and (c), to act reasonably in exchanging information and documents relevant to the claim and generally in trying to avoid the necessity for the start of proceedings.

## **INFORMATION ABOUT FUNDING ARRANGEMENTS**

- 4A.1 Where a person enters into a funding arrangement within the meaning of rule 43.2(1)(k) he should inform other potential parties to the claim that he has done so.
- 4A.2 Paragraph 4A.1 applies to all proceedings whether proceedings to which a pre-action protocol applies or otherwise.

(Rule 44.3B(1)(c) provides that a party may not recover any additional liability for any period in the proceedings during which he failed to provide information about a funding arrangement in accordance with a rule, practice direction or court order).

## COMMENCEMENT

- 5.1 The following table sets out the protocols currently in force, the date they came into force and their date of publication:

Protocol	Coming into force	Publication
Personal Injury	26 April 1999	January 1999
Clinical Negligence	26 April 1999	January 1999
Construction and Engineering Disputes	2 October 2000	September 2000
Defamation	2 October 2000	September 2000
Professional Negligence	16 July 2001	May 2001
Judicial Review	4 March 2002	3 December 2001

- 5.2 The court will take compliance or non-compliance with a relevant protocol into account where the claim was started after the coming into force of that protocol but will not do so where the claim was started before that date.
- 5.3 Parties in a claim started after a relevant protocol came into force, who have, by work done before that date, achieved the objectives sought to be achieved by certain requirements of that protocol, need not take any further steps to comply with those requirements. They will not be considered to have not complied with the protocol for the purposes of paragraphs 2 and 3.
- 5.4 Parties in a claim started after a relevant protocol came into force, who have not been able to comply with any particular requirements of that protocol because the period of time between the publication date and the date of coming into force was too short, will not be considered to have not complied with the protocol for the purposes of paragraphs 2 and 3.

